

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 7 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KIRTIKANT RATIALAL VASANI

Versus

STATE OF GUJARAT

Appearance:

MR TIRMIZI, M/S THAKKAR ASSOC. for Petitioner

MR SA PANDYA, APP for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 17/03/99

ORAL JUDGEMENT

Heard Mr.Tirmizi, learned counsel for the petitioner and Mr.S.A.Pandya, learned APP for the State.

2. The present petitioner has filed the present petition for quashing and setting aside the impugned complaint and order framing the charge under secs.406 and 420 of IPC passed by the learned J.M.F.C., Botad on

21-11-1998, on the ground that present petitioner had preferred one Criminal Revision Appln. No.154 of 1995 in the District & Sessions Court, Bhavnagar which has been decided on 5-6-1996 wherein he has directed the learned JMFC, Botad to frame the charge under sec.420 of IPC only in Criminal Case No.420 of 1995, which has been filed by the brother of the present petitioner, whereas the learned Magistrate has passed the order and framed the charge under secs.406 and 420 of IPC.

3. I have gone through the order passed by the learned JMFC, Botad below exh.1. It is a detailed order passed by the learned JMFC after hearing the learned counsel for the respective parties and after considering the judgments relied upon by them. But facts remain that the attention of the Hon'ble Court was not been drawn by both the parties regarding the directions given by the learned Addl. Sessions Judge in Cri. Rev. Appln. No.154 of 1995. Therefore, through oversight the learned Magistrate has framed charge under secs.406 and 420 of IPC which is nothing but a bona-fide mistake on the part of learned Magistrate. If the parties, more particularly when the petitioner is an advocate, would have drawn the attention of the Court below, i.e. learned J.M.F.C., regarding the direction given by the learned Addl. Sessions Judge in Cri. Rev. Appln.No.154 of 1995, then definitely this order would not have been passed by the learned J.M.F.C. So, looking to the facts and circumstances of the case, the order passed by the learned JMFC on 21-11-1998 is required to be quashed and set aside only on that ground.

4. The question regarding quashing of the complaint does not arise at this stage mainly on the ground that the complaint has been filed in the year 1992 and till today, only charge has been framed. If the petitioner has not played any material role, Court could not have proceeded with the matter and now, he cannot be permitted to take advantage of his own act. Over and above, there is a specific allegation against the present petitioner and even revisional Court has also directed learned JMFC to frame the charge under sec.420 of IPC. When matter is already fixed for hearing, I do not find it fit to use my discretionary power in favour of the petitioner.

5. This Criminal Revision Application is partly allowed. Order passed by the learned J.M.F.C., Botad on 21-11-1998 in Criminal Case No.420 of 1995 is hereby quashed and set aside. Learned J.M.F.C. is hereby directed to frame the charge keeping in mind the order passed in Cri.Rev. Appln.No.154 of 1995 by the learned

Addl. Sessions Judge, Bhavnagar, and proceed further with the matter expeditiously. Rest of the prayers are rejected.

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